IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPELLANT :	Lundy LEWIS	CONFIRMATION NO.:	4215
SERIAL NUMBER :	09/577,225	EXAMINER:	Tan D. Nguyen
FILING DATE :	May 23, 2000	ART UNIT:	3629
FOR :	METHOD AND APPARATUS FOR SERVICE LEVEL MANAGEMENT (SLM)		

Appellant's Reply Brief Under 37 C.F.R. § 41.41

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I. Introduction

Appellant is filing this Reply Brief within two months of the Examiner's Answer dated December 13, 2007 (hereinafter "Answer"). This Reply Brief responds to the new points that the Examiner has raised in response to Appellant's Brief on Appeal filed September 20, 2007 (hereinafter "Appeal Brief").

II. Status of Claims

Claims 1, 3-6, 10-13, and 30-33 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,446,200 to Ball et al. ("Ball").

III. Response to Examiner's Arguments

In the Answer, the Examiner continues to allege that Ball teaches the features of "identifying . . . a service parameter that provides a measure of a service level of the at least one of the plurality of services" and "identifying a component parameter that measures a performance of one of the plurality of network components," as recited in independent claim 1, for example.

More particularly, although the Examiner acknowledges the "cited examples of the service parameters and component parameters on page 5" of the Appeal Brief, the Examiner nonetheless alleges that "the examples are not in the claim and the claims are not limited by the example." Answer at 7. Thus, because "the claim uses language 'for at least one of the plurality of services' and 'one of the plurality of network components,'" the Examiner alleges that "citing one service parameter (transmission flow or packet loss) and one network component (transmission device) is sufficient to meet the claim language." Answer at 7. Appellant disagrees with the Examiner's assessment.

The Examiner's arguments fail to cure the deficiencies of the rejection pointed out in the Appeal Brief for at least the reason that the Examiner has failed to properly characterize the claim language. For example, Appellant has not argued that the claimed invention is distinct from Ball because of the claim language refers to "one service parameter" or "one network component." Rather, Appellant has noted the distinction in the combination of features whereby the "service parameter . . . provides a measure of a service level " and the "component parameter . . . measures a performance level of one of the plurality of network components." Hence, by "identifying a relationship between the component parameter and the service parameter," the performance of a given service can be determined from the performance of a related network component.

On the other hand, Ball does not disclose "a service parameter that provides a measure of a service level " or "a component parameter that measures a performance level of one of the plurality of network components." For example, the Examiner continues to allege that "transmission flow or packet loss" corresponds to the "service parameter" recited in claim 1. However, the Examiner has failed to demonstrate that Ball discloses a "component parameter" having an identifiable relationship to the alleged "service parameter" of packet loss. The deficiency of the rejection in this regard is apparent from the Examiner's continued reliance on Ball as allegedly teaching "the measuring of different kinds of metrics from the network and use [*sic*] packet loss detector monitor to determine the kind of quality of service provided." Answer at 8.

Specifically, contrary to the Examiner's assertions, Ball's collecting "different kinds of metrics from the network" cannot fairly be characterized as measuring "a performance of one of the plurality of network components." For example, in describing "a process . . . for capturing quality of service in a network system," Ball explains that an "important component . . . includes determining whether there has been packet loss (col. 31, lines 52-53), but the "information used to determine packet loss" is obtained by examining "bits sets in the type of service (TOS) field of each packet's IP header" (col. 32, line 53 – col. 33, line 2). However, because Ball does not disclose that information in a packet header "measures a performance level of one of the plurality of network components," the Examiner has improperly alleged that the network metrics measured in Ball correspond to "a component parameter that measures a performance level of one of the plurality of network components."

Furthermore, Ball notes that "[b]ecause packet loss is a statistical phenomenon, the capturing quality of service process . . . observes . . . a large number of network flows" (col. 32, lines 10-12). However, the information measured across the network flows involves information from "aggregated flows or 'classes,'" which Ball concedes to be obtained from "a large number of samples, over a large amount of time" (col. 31, line 52 – col. 32, line 34). Thus, for at least the reason that Ball discloses measuring network flow information to create a statistical abstraction of network conditions, which does not relate to the performance of any specific network component, Ball fails to disclose at least the feature of "identifying a component parameter that measures a performance level of <u>one</u> of the plurality of network components," as recited in claim 1, for example.

Accordingly, for at least the foregoing reasons, the arguments that the Examiner has raised in the Answer fail to cure the deficiencies of the rejection previously discussed in the Appeal Brief. Thus, for at least the reasons set forth therein, and for the further reasons discussed herein, the rejection of claims 1, 3-6, 10-13, and 30-33 as allegedly being anticipated by Ball is improper and must be reversed.

Conclusion

For at least the foregoing reasons, Appellant respectfully appeals to this Honorable Board to promptly reverse the rejections, and to issue a decision in favor in Appellant, as all of the pending claims are in condition for allowance.

Date: **February 13, 2008**

Respectfully submitted,

By: _____

S. Jafar Ali
Registration No. 58,780

PILLSBURY WINTHROP SHAW PITTMAN LLP
P.O. Box 10500
McLean, Virginia 22102
Main: 703-770-7900
Fax: 703-770-7901